

# Senate Study Bill 1201

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CHAIRPERSON KREIMAN)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the certificate of needs process including  
2 procedures for contested applications and applications  
3 relating to institutional health facilities in rural areas.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
5 TLSB 1980XC 83  
6 pf/nh/8

PAG LIN

1 1 Section 1. Section 135.61, Code 2009, is amended by adding  
1 2 the following new subsection:  
1 3 NEW SUBSECTION. 21A. "Rural area" means any of the  
1 4 following:  
1 5 a. A county with a population of less than fifty thousand  
1 6 persons.  
1 7 b. A geographic area outside an urban or suburban setting  
1 8 which, due to its location, requires at least twenty minutes  
1 9 of travel time on normally traveled roads under normal traffic  
1 10 conditions between institutional health facilities of the same  
1 11 type.  
1 12 Sec. 2. Section 135.62, subsection 2, paragraph d,  
1 13 subparagraph (1), Code 2009, is amended to read as follows:  
1 14 (1) Make the final decision, as required by section  
1 15 135.69, with respect to each uncontested application for a  
1 16 certificate of need accepted by the department.  
1 17 Sec. 3. Section 135.63, subsection 2, Code 2009, is  
1 18 amended by adding the following new paragraph:  
1 19 NEW PARAGRAPH. q. An institutional health facility  
1 20 constructed, renovated, relocated, or otherwise offered or  
1 21 developed in a rural area.  
1 22 Sec. 4. Section 135.64, subsection 1, unnumbered paragraph  
1 23 1, Code 2009, is amended to read as follows:  
1 24 In determining whether a certificate of need shall be  
1 25 issued, the department and council, and the administrative law  
1 26 judge with respect to a contested application pursuant to  
1 27 section 135.66A, shall consider the following:  
1 28 Sec. 5. Section 135.64, subsection 1, paragraph r, Code  
1 29 2009, is amended to read as follows:  
1 30 r. The recommendations of staff personnel of the  
1 31 department assigned to the area of certificate of need,  
1 32 concerning the application, if requested by the council or by  
1 33 the administrative law judge pursuant to section 135.66A.  
1 34 Sec. 6. Section 135.64, subsection 2, unnumbered paragraph  
1 35 1, Code 2009, is amended to read as follows:  
2 1 In addition to the findings required with respect to any of  
2 2 the criteria listed in subsection 1 of this section, the  
2 3 council ~~shall grant~~ or the administrative law judge pursuant  
2 4 to section 135.66A may approve an application for a  
2 5 certificate of need for a new institutional health service or  
2 6 changed institutional health service only if ~~it~~ the council or  
2 7 the administrative law judge finds in writing, on the basis of  
2 8 data submitted ~~to it~~ by the department, that:  
2 9 Sec. 7. NEW SECTION. 135.66A CONTESTED APPLICATION  
2 10 PROCEDURE.  
2 11 1. After formal review of an application for a certificate  
2 12 of need has been initiated and notification has been made  
2 13 pursuant to section 135.66 and prior to any final decision on  
2 14 the application, any affected party or affected party's  
2 15 designated representative may contest the application by  
2 16 filing a petition with the department for a hearing on the  
2 17 application. The hearing shall be a contested case proceeding

2 18 subject to all of the provisions of chapter 17A applicable to  
2 19 contested cases, unless otherwise specified in this section.  
2 20 a. A party contesting the application may petition the  
2 21 department for a contested case hearing under this section by  
2 22 submitting a written request to the director within fifteen  
2 23 days of the date of public notification of formal review  
2 24 pursuant to section 135.66, subsection 2. Any petition filed  
2 25 after the fifteen-day period shall not be accepted and the  
2 26 department shall not have jurisdiction to consider such  
2 27 petition.

2 28 b. Upon receipt of a timely filed petition, the department  
2 29 shall immediately forward the petition to the department of  
2 30 inspections and appeals for assignment to an administrative  
2 31 law judge.

2 32 c. A contested case proceeding under this section shall be  
2 33 heard and presided over by an administrative law judge sitting  
2 34 alone. The administrative law judge shall conduct the  
2 35 proceedings as a matter of first impression subject to de novo  
3 1 review.

3 2 d. The subject of the contested case proceeding shall be  
3 3 limited to a single application and shall not concern the  
3 4 merits of any other pending application of the same applicant.

3 5 e. The administrative law judge shall convene the parties  
3 6 for a scheduling conference within fifteen days of the date  
3 7 the petition was filed. During the scheduling conference,  
3 8 each party shall state the party's position regarding the  
3 9 alternative of mediation as provided in paragraph "g". If the  
3 10 parties do not agree to mediation, the hearing shall be  
3 11 scheduled to allow for completion of the proceedings within  
3 12 one hundred eighty days from the date the petition was filed,  
3 13 with an initial decision to be entered within sixty days of  
3 14 the date of completion of the hearing. Extensions of or  
3 15 variances in the scheduling shall only be made if substantial  
3 16 prejudice to a party would otherwise result.

3 17 f. The administrative law judge shall enter a proposed  
3 18 decision within thirty days of the date of the initial  
3 19 decision. Following entry of the proposed decision, the  
3 20 decision shall become a final decision unless a party appeals  
3 21 to the department within the time frames established in and in  
3 22 accordance with section 17A.15. If the department declines to  
3 23 hear an appeal on a proposed decision, the proposed decision  
3 24 is a final decision and may be subject to judicial review.

3 25 g. In lieu of a contested case hearing, the parties may  
3 26 participate in mediation. If the parties agree to mediation,  
3 27 the mediator shall be designated by mutual agreement of the  
3 28 parties. Mediation proceedings shall not be subject to the  
3 29 time frames established under this subsection for contested  
3 30 case hearings. Any mediation agreement or failure to reach an  
3 31 agreement shall be part of the record of the proceedings and  
3 32 final decision by the administrative law judge.

3 33 h. A party who is aggrieved or adversely affected by a  
3 34 final decision under this section is entitled to judicial  
3 35 review pursuant to section 17A.19.

4 1 i. All costs of a contested case hearing under this  
4 2 section shall be paid equally by all nonprevailing parties.  
4 3 No costs shall be assessed against the department.

4 4 2. This section shall not apply to contested cases  
4 5 initiated by the health facilities council regarding  
4 6 certificate of need decisions.

4 7 Sec. 8. Section 135.69, Code 2009, is amended to read as  
4 8 follows:

4 9 135.69 COUNCIL TO MAKE FINAL DECISION ON UNCONTESTED  
4 10 APPLICATIONS.

4 11 1. The department shall complete its formal review of the  
4 12 application, which is not contested and subject to section  
4 13 135.66A, within ninety days after acceptance of the  
4 14 application, except as otherwise provided by section 135.72,  
4 15 subsection 4. Upon completion of the formal review, the  
4 16 council shall approve or deny the application. The council  
4 17 shall issue written findings stating the basis for its  
4 18 decision on the application, and the department shall send  
4 19 copies of the council's decision and the written findings  
4 20 supporting the decision to the applicant and to any other  
4 21 person who so requests.

4 22 2. Failure by the council to issue a written decision on  
4 23 an application for a certificate of need, which is not  
4 24 contested and subject to section 135.66A, within the time  
4 25 required by this section shall constitute denial of and final  
4 26 administrative action on the application.

4 27 Sec. 9. Section 135.70, Code 2009, is amended to read as  
4 28 follows:

4 29 135.70 APPEAL OF UNCONTESTED CERTIFICATE OF NEED

4 30 DECISIONS.

4 31 1. The council's decision on an uncontested application  
4 32 for certificate of need, when announced pursuant to section  
4 33 135.69, is a final decision.

4 34 2. Any dissatisfied party who is an affected person with  
4 35 respect to the uncontested application, and who participated  
5 1 or sought unsuccessfully to participate in the formal review  
5 2 procedure prescribed by section 135.66, may request a  
5 3 rehearing in accordance with chapter 17A and rules of the  
5 4 department.

5 5 3. If a rehearing is not requested or an affected party  
5 6 remains dissatisfied after the request for rehearing, an  
5 7 appeal may be taken in the manner provided by chapter 17A.

5 8 4. Notwithstanding the Iowa administrative procedure Act,  
5 9 chapter 17A, a request for rehearing is not required, prior to  
5 10 appeal under section 17A.19.

5 11 Sec. 10. Section 135.72, Code 2009, is amended by adding  
5 12 the following new subsection:

5 13 NEW SUBSECTION. 5. Rules relating to contested  
5 14 applications for a certificate of need including procedures  
5 15 pursuant to section 135.66A.

5 16 EXPLANATION

5 17 This bill relates to the certificate of need process. The  
5 18 bill provides for an exclusion from the certificate of need  
5 19 process for institutional health facilities constructed,  
5 20 renovated, relocated, or otherwise offered or developed in a  
5 21 rural area. The bill defines "rural area" as a county with a  
5 22 population of less than 50,000 persons or a geographic area  
5 23 outside an urban or suburban setting which, due to its  
5 24 location, requires at least 20 minutes of travel time on  
5 25 normally traveled roads under normal traffic conditions  
5 26 between institutional health facilities of the same type.

5 27 The bill also establishes a procedure for contested  
5 28 certificate of need applications. The bill provides that  
5 29 after the department of public health has received an  
5 30 application for a certificate of need, formal review of the  
5 31 application has been initiated, and notification regarding the  
5 32 application has been made, if any affected party or a party's  
5 33 representative contests the application and follows the  
5 34 specified process for petitioning, the contested application  
5 35 may be subject to a contested case hearing as provided in the  
6 1 administrative procedure Act, Code chapter 17A, and the  
6 2 provisions of the bill. The bill establishes time frames for  
6 3 the contested case proceeding and also provides for mediation  
6 4 in lieu of the contested case proceeding. A contested case  
6 5 proceeding on an application is to be heard and presided over  
6 6 by an administrative law judge sitting alone, and the hearing  
6 7 is to be conducted as a matter of first impression subject to  
6 8 de novo review. The subject matter of the contested case  
6 9 proceeding is limited to the single application and is not to  
6 10 concern the merits of any other pending application of the  
6 11 same applicant. Once the administrative law judge makes a  
6 12 proposed decision on the application, the proposed decision  
6 13 becomes a final decision unless a party appeals to the  
6 14 department of public health within the specified time frames.  
6 15 If the department declines to hear an appeal on a proposed  
6 16 decision, the proposed decision is a final decision and may be  
6 17 subject to judicial review. A party who is aggrieved or  
6 18 adversely affected by a final decision under the bill is  
6 19 entitled to judicial review. The costs of a contested case  
6 20 hearing are to be paid equally by all nonprevailing parties.  
6 21 No costs are to be assessed against the department. The  
6 22 procedure does not apply to contested cases initiated by the  
6 23 health facilities council regarding certificate of need  
6 24 decisions.

6 25 The bill makes other conforming changes to reflect the new  
6 26 procedure for contested certificate of need applications.

6 27 LSB 1980XC 83

6 28 pf/nh/8